IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

GLENROY A. WARRINGTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil No. 2006-235**
	)	
HECTOR MANUEL CAMACHO, MIGUEL ROVIRA and POLYMER INDUSTRIES, INC.	)	
	)	
	)	
Defendants.	)	
	)	

ATTORNEYS:

Robert L. King, Esq.
St. Thomas, U.S.V.I.
For the plaintiff.

Michael J. Sanford, Esq.
St. Croix, U.S.V.I.
For defendants Miguel Rovira and Polymer Industries, Inc.

ORDER

GÓMEZ, C.J.

Before the Court is the motion of defendants Miguel Rovira ("Rovira") and Polymer Industries, Inc. ("Polymer Industries") to dismiss the claims of the plaintiff, Glenroy A. Warrington ("Warrington"). For the reasons stated below, the motion will be granted in part and denied in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about October 5, 2005, Warrington was driving his automobile on the Cyril E. King Airport Road on St. Thomas, U.S. Virgin Islands. Warrington's automobile collided with that of

defendant Hector Manuel Camacho ("Camacho"). Warrington thereafter brought this negligence action for personal injuries he sustained in the collision. Warrington named as defendants Camacho; Polymer Industries, Camacho's employer; and Rovira, the lessee of the automobile Camacho was driving when the collision occurred.

Rovira and Polymer Industries now move to dismiss the claims against them pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.[1]

II. DISCUSSION

When considering a motion to dismiss pursuant to Rule 12(b)(6), all material allegations in the complaint are taken as admitted, and the Court must construe all facts in a light most favorable to the non-moving party. *Christopher v. Harbury*, 536

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[1] Attached to the motion to dismiss is an affidavit by Rovira. Warrington thus urges that the motion to dismiss be treated as a motion for summary judgment under Rule 56. Rule 12(b) provides that if, on a motion to dismiss under Rule 12(b)(6),

> matters outside the pleading are presented to *and not excluded by the court*, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Fed. R. Civ. P. 12(b) (emphasis supplied). Here, the motion to dismiss need not be converted into a motion for summary judgment because the Court excludes Rovira's affidavit in reaching a decision on the motion.

U.S. 403, 406 (2002). All reasonable inferences are drawn in favor of the non-moving party. *Alston v. Parker*, 363 F.3d 229, 233 (3d Cir. 2004). A complaint should not be dismissed unless the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *Hartford Fire Ins. Co. v. Cal.*, 509 U.S. 764, 810 (1993) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

III. ANALYSIS

A. Rovira

Warrington alleges that Rovira is liable under a negligent entrustment theory.

To state a claim for negligent entrustment, the plaintiff must allege:

> (1) entrustment of a chattel to a party;
> (2) likelihood that such party because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and others whom the entruster should expect to be endangered;
> (3) knowledge or reason to know by the entruster of such a likelihood;
> (4) proximate cause of the harm to plaintiff by the conduct of the entrustee

Restatement (Second) of Torts § 390 (1977); *see also Baron by & Through Baron v. Rosario*, 982 F. Supp. 1037, 1039 (D.V.I. 1997).

Here, Warrington alleges that Rovira negligently entrusted to Camacho an automobile Rovira had rented. (Compl. § 16.) Warrington further alleges that he has suffered injury as a

direct and proximate result of Rovira's negligence. (*Id.* at § 17.)

However, Warrington does not allege that there was a likelihood that Camacho's youth or inexperience would cause Camacho to use the automobile in a manner involving unreasonable risk to persons that Rovira should have expected to be endangered. Warrington also fails to allege that Rovira had knowledge or reason to know that such a likelihood existed. Accordingly, Warrington has failed to state a negligent entrustment claim.

B. Polymer Industries

Warrington alleges that Polymer Industries is liable under a respondeat superior theory or a master-servant theory.

To state a negligence claim under a respondeat superior theory, a plaintiff must allege that

> (1) the employee's tort encompasses the type of action the employee was hired to perform, (2) the employee's tort occurs within prescribed limits of time and space, and (3) the employee's tort purposefully serves the employer.

Bell v. Univ. of the V.I., Civ. No. 2000-62, 2003 U.S. Dist. LEXIS 25380, at *8 (D.V.I. Nov. 19, 2003); *Chase v. Virgin Islands Port Auth.*, 3 F. Supp. 2d 641, 642-43 (D.V.I. 1998).

Here, Warrington has alleged that at the time of the collision, Camacho was employed by Polymer Industries, was performing services for Polymer Industries' benefit, and was

acting within the course and scope of his employment with Polymer Industries.

Accordingly, Warrington has alleged all of the elements of a negligence claim under a respondeat superior theory.

IV. CONCLUSION

For the reasons stated above, it is hereby

ORDERED that the motion to dismiss as to Rovira is **GRANTED**; and it is further

ORDERED that the motion to dismiss as to Polymer Industries is **DENIED**.

Dated: October 22, 2007

S_____
CURTIS V. GÓMEZ
Chief Judge

copy: Hon. Geoffrey W. Barnard
Robert L. King, Esq.
Michael J. Sanford, Esq.
Carol C. Jackson
Lydia Trotman
Claudette Donovan
Olga Schneider
Gregory F. Laufer